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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,787	11/07/2000	Benoit Laflamme		4281

28291 7590 03/20/2006

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EXAMINER

MASINICK, MICHAEL D

ART UNIT PAPER NUMBER

2125

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/709,787	Applicant(s) LAFLAMME ET AL.	
	Examiner Michael D. Masinick	Art Unit 2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/20/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 155,158-172,180-183,185-187 and 190-219 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 155,158-172,180-183,185-187 and 190-219 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet.</u> |

Continuation of Attachment(s) 6). Other: Provisional Application 60/109229.

DETAILED ACTION

Response to Arguments

1. Claims 155, 158-172, 180-183, 185-187 and 190-219 are pending in this application.
2. Applicant's arguments filed 2/20/2006 have been fully considered but they are only partially persuasive. Applicant's arguments regarding the written description requirement and enablement requirements are persuasive and those rejections have been removed. Applicant's arguments regarding the USC 102 rejection are persuasive, however, the arguments regarding the alternative USC 103 rejection are not persuasive and that rejection is maintained below.

Applicant is thanked for correcting the minor issues noted in the previous claim objections and those objections are removed.
3. Applicant has asked the examiner to show that certain claim elements were present in the provisional application 60/190,229 by Elwahab. Examiner recognizes that the text of the provisional application is different from the specification of the Elwahab publication previously relied upon. However, all claim elements suggested by applicant to be absent from the provisional application are noted below with their citations.
4. Applicant suggests that the Elwahab provisional application does not show "receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller means". Examiner submits that this is shown on page 8 of the provisional application, specifically lines 23-26, which states "Additional smart device XML pages, or updates for existing smart device XML pages is used at a CPG 10, can be obtained (e.g. downloaded from the

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internet) from any service provider...". This phrase clearly reads on the claim element above.

The examiner's position is that the "smart device" of Elwahab could be set up as a spa controller, ie: combined with the Bassett reference, in order to arrive at the claimed invention. The USC 103 rejection is maintained as previously written.

5. In response to applicant's argument that Bassett and Elwahab is nonanalogous art or that they are not related to applicant's field of endeavor, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, applicant is concerned with the remote control and updating of spa's and spa software.

6. Applicant's argument that one of ordinary skill in the art of spa control would not look to the art of home automation as "prior art" is simply not persuasive. In fact, home automation is likely the first place one of ordinary skill would look.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 155, 160-163, 168-172, 180-183, 185-187, 190-200, 203-206 and 210-219 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication

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2001/0034754 to Elwahab (provisional application copy included in this correspondence) in view of U.S. Patent No. 5,706,191 to Bassett et al.

1. Referring to claims 155, 186, 195, and 198, Elwahab shows a spa control system comprising: a spa controller (see examiner's note below), an interface signal converter (Paragraph 0006 – "Devices which use different protocols... can be connected to the system via a converter"), in communication with said spa controller, said interface being operative for: establishing a communication link with a remote computer (Paragraph 0012); receiving communication signals conveying software components over the communications link (Paragraph 0072), said software components comprising updates to software already installed on said spa controller; communicating said software components to said spa controller (Paragraph 0072 or page 8 of the provisional application); wherein said interface signal converter converts communication signals received from the remote computer via said communications link and directs the converted signals to the spa controller, and wherein said interface signal converter converts signals from the spa controller to be communicated to said remote computer via said communications link (Examiner notes that these last two phrases are the purpose of a converter as cited above).

2. Examiner notes that Elwahab does not specifically show control of a spa. Elwahab is a device, system, and method for providing remote access to standard appliances. A spa is a well known home appliance which has been historically controlled from remote locations.

3. The Bassett patent is a home automation system that shows a spa being remotely controlled by a central controlling system.

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4. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Elwahab to control and update the software of the spa control system shown in Bassett because remote control of the spa system would allow the user modify the water temperature, jets, and even lighting of the spa without being physically located in the presence of the spa. It should be further noted Bassett and Elwahab are analogous art as they both use CEBus to communicate and could be used together in a control environment.

5. Referring specifically to independent claim 195, Elwahab shows all elements of this claim as related to claim 155 and additionally shows wherein the remote computer is a hand-portable remote computer (paragraph 0025).

6. Referring to independent claim 200, Elwahab shows all claim elements as cited in relation to claim 155.

7. Referring to independent claim 216, Elwahab shows all claim elements as cited in relation to claim 155. Examiner further notes that all computers inherently contain a memory and a processor.

8. Referring to claims 160-163, and 203-206 Elwahab shows where the interface signal converter comprises an IR or RF transceiver and is capable of transceiving at least two different types of signals. Examiner notes that this system is capable of running on the CEBus system (Paragraph 0006) and would inherently be able to transceive all communications available on such a system.

9. Referring to claims 168 and 210, Elwahab shows wherein said interface signal converter is adapted for establishing a communications link with a remote computer of a wire-line (Paragraph 0006 – “x10”).

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10. Referring to claims 169, 211, and 219 Elwahab shows wherein said communications link is a wireless communications link (Paragraph 0025 - RF).

11. Referring to claim 170-172 and 212-213, Elwahab shows wherein said interface signal converter is adapted for establishing a communications link with a remote computer through a computer network (Paragraph 0025 - internet).

12. Referring to claim 180, Elwahab shows wherein said computer network is a LAN (Paragraph 0025 - intranet).

13. Referring to claim 181, 182, 196, 197, 199, 214, 215, 217 and 218, Elwahab shows wherein said remote computer is a PDA or cellular phone (Paragraph 0025 – Handheld computing devices).

14. Referring to claim 183, the location of the system does not change the physical nature and connections of the system itself.

15. Referring to claim 185, Elwahab shows wherein said remote computer is used to monitor and control the spa. This is the purpose of the Elwahab publication as noted above.

16. Specifically with regard to claim 187, with regard to what has been shown above, Elwahab does not show that the data transferred from the spa controller to the remote computer is a “record of errors”.

17. Bassett shows an automated residence system similar to that of Elwahab in that it uses the CEBus and other common protocols to communicate with household appliances (including a spa). Bassett shows the transfer of a “record of errors” from the appliance controller (“AIMs”) to the central controller.

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18. Bassett notes in paragraph 10, "It also would be desirable to provide for the connection between various appliances in a home, which would also permit various diagnostic and analysis functions to be conducted, and communicated to a user/operator, so as to be able, for example, to inform the user/operator of an actual or anticipated failure in a component, or to inform the user of past performance or power consumption, and even possibly make projections of expected performance."

19. It would have been obvious to one of ordinary skill in the art to use the transmission of "actual or anticipated failure" information of Bassett in the system of Elwahab because the ability to diagnose failures leads to a quick correction of problems. Bassett and Elwahab are analogous art as they both use CEBus to communicate and could be used together in a control environment.

20. Claims 190-193 are rejected using the same citations as claims 169, 182, 167, and 160.

21. Referring to claim 194, Bassett shows wherein said record of errors comprises the number of times an error has occurred ("past performance" – Column 2, line 19). Examiner further notes that there is no support for this claim element in the original specification. Figure 8 shows a record of errors, but there is no support for that record being transmitted or that the record contains a number of times an error has occurred.

22. Claims 158, 159, 201, and 202 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication 2001/0034754 to Elwahab (provisional application copy included in this correspondence) in view of U.S. Patent No. 5,706,191 to Bassett et al and further in view of U.S. Patent No. 5,877,957 to Bennett.

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23. Elwahab does not specifically show the use of a RS-485 transceiver in the interface signal converter alone or as one of two different types of communications.

24. Bennett shows an appliance control system in a home automation environment. In Column 20, lines 1-9, Bennett shows that in addition to CEBus, X-10, and other home automation protocols, RS-485 may also be used. This also shows that the connection could be a wired or wireless connection as required by the system designer.

It would have been obvious to one of ordinary skill in the art at the time of invention to use a RS-485 transceiver as a communications transceiver of Elwahab because it is another commonly used protocol in the computer networking industry as shown by Bennett and can be used in the CEBus system as shown above.

25. Claims 164-167, 207-209 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication 2001/0034754 to Elwahab (provisional application copy included in this correspondence) in view of U.S. Patent No. 5,706,191 to Bassett et al and further in view of U.S. Patent No. 6,459,959 to Williams et al.

26. Elwahab does not specifically show that the interface signal converter can be removable, secured, or fits into a cavity.

27. Williams shows an irrigation system with removable station modules for watering. Because of the damp conditions, these modules may be attached with screws as shown in figure 4, or a removable bracket as shown in figure 5. Figure 7 shows a cavity where the controller module would be placed.

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28. It would have been obvious to one of ordinary skill in the art at the time of invention to use the removable modules and cavity of Williams in the desired spa control system of Elwahab because they share the same problem of dampness and wet conditions. It would have been obvious to one looking to solve this problem to look in any art where large amounts of water are involved.

Conclusion

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

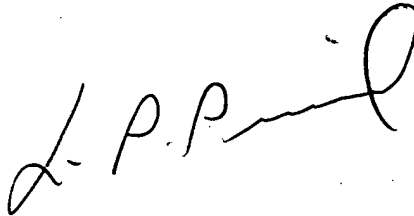
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D. Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MDM, March 13, 2006

A handwritten signature in black ink, appearing to read 'L. P. Picard', with a large, stylized loop at the end.

**LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100**

03-20-00

A/PROV

PROVISIONAL APPLICATION FOR PATENT

Attorney Docket No. 080632-0101

Assistant Commissioner for Patents
 Box Provisional Application
 Washington, D. C. 20231

Assistant Commissioner:

This is a request for filing a **PROVISIONAL APPLICATION FOR PATENT UNDER 37 CFR 1.53(c)**.

INVENTOR(S)/APPLICANT(S)			
LAST NAME	FIRST NAME	MIDDLE INITIAL	RESIDENCE (City & either State or Country)
Elwahab	Amgad		
Mohammed	Jag		
Pelster	Michael		
Smith	Todd		

TITLE OF THE INVENTION
SYSTEM FOR PROVIDING WEB BROWSER ACCESS AND CONTROL OF DEVICES ON CUSTOMER PREMISES GATEWAY

In connection with this application, the following are enclosed:

16 Pages of Specification
 04 Sheets of Drawings
 — Small Entity Declaration – Independent Inventor

Direct all correspondence to: Frederick D. Kim
 Foley & Lardner
 2029 Century Park East, 35th Floor
 Los Angeles, CA 90067
 310-277-2223

The fee has been calculated as shown below. (Small entity fees indicated in parentheses.)

Filing Fee	\$150 (\$75)	\$150.00
Rule 17(k) fee for non-English text	\$130	
Assignment Recording Fee	\$ 40	
TOTAL FEE		\$150.00

A check is enclosed to cover the filing fees.

The invention was made by an agency of the United States Government or under a contract with an agency of the United States Government.

☒ No ☐ Yes, the name of the U.S. Government agency and the Government contract number are: _____

Respectfully submitted,

Date: March 17, 2000

Frederick D. Kim
 Frederick D. Kim
 Reg. No. 38,513

10541 U.S. PTO
 60/190229
 03/17/00